



# R V. DUDLEY AND STEPHENS REVISITED: A MODERN PERSPECTIVE ON MORALITY, LAW, AND SURVIVAL ETHICS

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## ABSTRACT

This paper critically examines the 19<sup>th</sup>-century case *R v. Dudley and Stephens*, analyzing its legal and ethical implications within the framework of the necessity defense. It explores how the case set a precedent against justifying murder for survival and compares it with *United States v. Holmes and Re A (Conjoined Twins)* to assess the evolving interpretation of necessity in legal contexts. The analysis concludes that the verdict in *R v. Dudley and Stephens* still allows room for further examination and debate among legal scholars. The research highlights gaps in the verdict's reasoning and evaluates its lasting impact on modern criminal law. By revisiting the case through contemporary legal perspectives, this study invites further discourse on necessity in extreme circumstances.

**KEYWORDS:** Necessity Defense, Criminal Law, *R v. Dudley and Stephens*, Legal Ethics, Moral Justification, Precedent in Law

## INTRODUCTION

On July 5th, 1884, the crew of the *Mignonette*—Thomas Dudley, Edward Stephens, Brooks, and cabin boy Richard Parker—were stranded after a storm. The four men escaped to a lifeboat, which contained no food or water except for two small cans of preserved turnips. For the next three days, they survived on these provisions. On the fourth day, they caught a sea turtle, which sustained them for the next eight days. However, after consuming their last food, they endured eight more days without sustenance, relying on sporadic rainfall for water.

On the nineteenth day, Dudley suggested a lottery to determine who would sacrifice their life to save the others. Brooks refused, and no lots were drawn. As Parker—an orphan and the youngest of the group—succumbed to illness from drinking seawater, Dudley proposed killing him if no rescue came by morning. On the next day, after a prayer and with Stephens' assent, Dudley killed Parker by stabbing him in the jugular vein. The remaining crew survived on Parker's blood and flesh for four days before being rescued. Upon their return to England, they faced trial for murder (*R v. Dudley and Stephens* (1884) 14 QBD 273 DC).

### The Gap

While the necessity doctrine is widely discussed in judicial circles, and *R v. Dudley and Stephens* is frequently cited in these discussions, there is a lack of direct analysis of the case itself, particularly in terms of its verdict. Additionally, there is no exploration of the case using modern evidence or perspectives on necessity that were unavailable at the time of the trial.

### Thesis Statement

The verdict in *R v. Dudley and Stephens* should be rediscussed because modern interpretations of the necessity defense offer a clearer understanding of how homicide by necessity challenges traditional legal principles.

## METHODOLOGY

This study employs a secondary qualitative methodology to analyze the legal and ethical implications of the *R v. Dudley and Stephens* case. The research relies on scholarly articles, legal case studies, and historical court rulings to assess how the necessity defense has evolved over time. This approach was chosen as it allows for a comprehensive review of existing legal interpretations without requiring direct empirical data. However, the reliance on secondary sources presents limitations, such as potential bias in legal analyses and the inability to account for contemporary judicial perspectives. Despite these constraints, this methodology effectively contextualizes the case within broader legal frameworks.

### Definition of the Principle of Necessity

The necessity defense does not have a single, universally accepted definition (Brozneck, 2018). Edward B. Arnolds, author of *The Defense of Necessity in Criminal Law: The Right to Choose the Lesser Evil*, defines it as follows: "By necessity is meant the assertion that conduct promotes some value higher than the value of literal compliance with the law" (Arnolds & Norman, 1975). Margo Brozneck, in her paper *History and Current Applications of the Necessity Defense in the United States*, references the Model Penal Code's definition of necessity:

MPC § 3.02. Justification Generally: Choice of Evils: (1) Conduct that the actor believes to be necessary to avoid a harm or evil to himself or another is justifiable, provided that: (a) the harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged; and (b) neither the Code nor other law defining the offense provides exceptions or defenses dealing with the specific situation involved (1962).

Benjamin Berger also refers to this definition in his paper "A

Choice Among Values: Theoretical and Historical Perspectives on the Defense of Necessity” (2002), summarizing it as follows: “The Model Penal Code defines necessity as a situation in which the evil sought to be avoided is greater than the evil that the law proscribes.”

The lack of a universally accepted definition complicates the application of necessity in legal contexts. This variability allows for differing interpretations, particularly in morally charged cases such as *R v. Dudley and Stephens*.

### **R v. Dudley and Stephens and the Necessity Doctrine**

*R v. Dudley and Stephens* is pivotal in discussing the necessity doctrine, particularly in extreme survival scenarios. The primary argument in the case centers on whether necessity could justify the murder of Parker.

A. Collins Q.C., the defendants’ counsel, contended, “Necessity will excuse an act which would otherwise be a crime,” arguing that the prisoners acted only to save their own lives. He further emphasizes this when stating, “The essence of the crime of murder is intention, and here the intention of the prisoners was only to preserve their lives” (*R v. Dudley and Stephens*, 14 Q.B.D. 273, 1884).

Most sources addressing the necessity doctrine cite *R v. Dudley and Stephens* as a foundational case. Michael Cotton, in his paper “*The Necessity Defense and the Moral Limits of Law*,” highlights its importance, stating, “This case’s importance lies upon the fact [that] the case made future use of the necessity defense more difficult because it prioritized self-sacrifice over necessity” (Cotton, 2015). By rejecting the defense of necessity in this instance, the court set a precedent that necessity could not justify murder, even in extreme circumstances, thereby affirming the primacy of moral considerations over pragmatic survival instincts.

An earlier yet equally used case in discussions of the necessity doctrine is the case of *United States v. Holmes*, which is even discussed in the actual trial of *R v. Dudley and Stephens*. It is important to note that the defendant, A. Collins, Q.C., used this case in his argument.

Following the shipwreck of the *William Brown*, crew members decided to throw fourteen passengers overboard to prevent the lifeboat from sinking (*United States v. Holmes*, 18 U.S. 412 (1842)). The verdict states, “The case does not become one of necessity unless all ordinary means of self-preservation have been exhausted. The peril must be instant, overwhelming, and leaving no alternative but to lose our own life or take the life of another person.” (Id.) In Edward B. Arnolds’ paper, *The Defense of Necessity in Criminal Law and the Right to Choose Lesser Evils*, he states: “The jury, after deliberating sixteen hours, returned a verdict of guilty, and the defendant was sentenced to six months imprisonment in solitary confinement at hard labor, and fined twenty dollars.” (Arnold, 1974).

In *R v. Dudley and Stephens*, the sailors had exhausted all available means of survival. They had consumed their last can of

turnips, attempted to fish unsuccessfully, and relied on a single sea turtle, which was insufficient to sustain them. The situation they faced seemed dire, and in their view, taking Parker’s life appeared to be the only way to survive. However, the peril was imminent rather than immediate, as there remained a possibility of rescue.

Unlike *R v. Dudley and Stephens*, where all survival options had been exhausted, the crew in *United States v. Holmes* arguably acted prematurely by throwing passengers overboard. This distinction shows how the immediacy of danger influences the viability of a necessity defense.

This comparison highlights that while *R v. Dudley and Stephens* involved a more prominent necessity, the actions taken were still unjustified under the law. The case of Holmes further illustrates how the defense of necessity is weakened when there is no evidence of exhausting all alternatives or when the threat is not immediate.

### **Analysis of the Verdict**

The verdict in *R v. Dudley and Stephens* upholds the sacredness of life by firmly rejecting necessity as a defense for murder, emphasizing that no individual has the right to determine the value of another’s life (“Who is to be the judge of this sort of necessity?”). The court also separates law from morality, leaving clemency to the Crown while ensuring that legal principles remain consistent (“There is no safe path for judges to tread but to ascertain the law to the best of their ability and to declare it according to their judgment”). The verdict also reinforces the moral expectation of self-sacrifice rather than the killing of an innocent, citing historical examples of duty and valor (“To preserve one’s life is generally speaking a duty, but it may be the plainest and the highest duty to sacrifice it”) (*R v. Dudley and Stephens*, 14 Q.B.D. 273, 1884).

However, the ruling does have certain weaknesses: firstly, it avoids fully engaging with necessity as a legal doctrine and instead relies heavily on moral reasoning (“We are certainly not prepared to suggest that necessity should in every case be a justification. We are equally unprepared to suggest that necessity should in no case be a defense.”) It also dismisses prior legal authorities rather than using them to develop a clearer stance on necessity (“Decided cases there are none ... the American case cited by Brother Stephen can hardly be an authority satisfactory to a court in this country”). While the verdict is legally consistent, it fails to account for the extreme conditions that Dudley and Stephens faced. (“The temptation to the act which existed here was not what the law has ever called necessity”) (*Id.*).

The paper *In Warm Blood: Some Historical and Procedural Aspects of Regina v. Dudley and Stephens*, published by *The Chicago Law Review* gives a detailed account of the *R v. Dudley and Stephens* case and the events; it describes the verdict like this: “Thus this long story has a happy ending. The judges obtained their precedent, Dudley and Stephens their freedom, Harcourt his continued reputation for humanity, and society its inconsistent ends.” (In warm blood, 2017).

The case of *Re A (Conjoined Twins)* (2000) is a recent example of a necessity defense in British criminal law; the case itself even mentions *R v. Dudley and Stephens* (*Re A (Children)*, 2001) involved twins, Mary and Jodie, who were born conjoined with a shared circulatory system. Jodie was relatively healthy, while Mary was entirely dependent on Jodie's heart for survival. Doctors recommended separation to save Jodie's life, knowing it would result in Mary's immediate death. However, the twins' Roman Catholic parents opposed the procedure (*Re A (conjoined twins)* [2001] 2 WLR 480.)

The hospital sought legal permission for the operation, which was granted by Johnson J., who likened the procedure to withdrawing life-sustaining treatment under the *Bland* principle. The parents appealed on three grounds: (1) the surgery was not in Mary's best interests, (2) it was not in Jodie's best interests, and (3) it would constitute an unlawful act rather than a lawful withdrawal of treatment (Offer, 2012). The necessity defense was used in order to justify the separation. In her paper, Laura critiques the *R v. Dudley and Stephens* as a defense in the *Re A* case, and some of her arguments are applicable to the discussion. She states, "First, in *Dudley*, Coleridge CJ asked, 'by what measure is the comparative value of lives to be measured? Is it to be strength, or intellect, or what? This 'question of human choice,' if allowed to have been made, would permit 'him who is to profit by it to determine the necessity which will justify him in deliberately taking another's life to save his own.'" This opens the discussion of morality and the reasoning that *Dudley* and *Stephens* had no right to decide that *Parker's* life was worth less than their own.

### The Verdict

*Dudley* and *Stephens* were initially assigned the death penalty (Hutchinson, 2010) and were reduced to only 6 months of imprisonment and a charge for murder (*R v Dudley and Stephens*, 14 Q.B.D. 273, 1884). This shows the crown's understanding of the mitigating circumstances, and this 'compromise' shows the courts mercy on their situation. The sentencing and verdict that necessity is not a defense for murder in this historical case was extremely impactful and is still used as a non-justification for homicide against necessity, as seen in the case of *Re A* (conjoined twins). It reinforced the sanctity of life over a utilitarian perspective.

### CONCLUSION

The case of *R v Dudley and Stephens* set an important legal precedent by rejecting necessity as a defense for murder, and its verdict. The court's ruling reinforced the idea that human life is sacred and that no person has the right to decide that another's life is worth less than their own. However, as this paper has shown, the verdict relied more on moral reasoning than a full legal examination of the necessity doctrine.

Comparing this case to *United States v. Holmes* and *Re A (Conjoined Twins)* highlights how necessity is applied differently depending on the circumstances. In *United States v. Holmes*, the decision to sacrifice passengers was made before all survival options were exhausted, weakening the necessity argument. In contrast, *Re A* showed that necessity can sometimes

justify taking a life when no other means exist or have been exhausted. This verdict shaped future legal discussions and continues to influence how necessity is interpreted in criminal law and can still be discussed and debated.

### REFERENCES

1. *R v Dudley and Stephens* (1884) 14 QBD 273
2. Arnolds, Edward B., and Norman F. Garland. "The Defense of Necessity in Criminal Law: The Right to Choose the Lesser Evil." *The Journal of Criminal Law and Criminology* (1973-), vol. 65, no. 3, 1974, pp. 289–301. JSTOR, <https://doi.org/10.2307/1142600>. Accessed 2 Feb. 2025.
3. Brozsek, Margo, History and Current Applications of the Necessity Defense in the United States (November 17, 2018). Available at SSRN: <https://ssrn.com/abstract=3345594> or <http://dx.doi.org/10.2139/ssrn.3345594>
4. Cotton, Michele. "The Necessity Defense and the Moral Limits of Law." *New Criminal Law Review: An International and Interdisciplinary Journal*, vol. 18, no. 1, 2015, pp. 35–70. JSTOR, <https://doi.org/10.1525/nclr.2015.18.1.35>. Accessed 2 Feb. 2025.
5. *United States v. Holmes*, 18 U.S. 412 (1842)
6. *Re A (conjoined twins)* [2001] 2 WLR 480
7. Offer, Laura (2012) "A Court of Law or a Court of Conscience: A Critique of the Decision in *Re A (Children)*," *The Plymouth Law and Criminal Justice Review*: Vol. 4, Article 6.
8. Hutchinson, Allan C., "Is Eating People Wrong?: Great Legal Cases and How They Shaped the World" (2010). Books. 106. Available at: [https://digitalcommons.osgoode.yorku.ca/faculty\\_books/106](https://digitalcommons.osgoode.yorku.ca/faculty_books/106)